

AGENDA
Independence Planning Commission
Independence Board of Zoning Appeals
Tuesday, October 1, 2019
Veterans Room Memorial Hall 5:30 p.m.

I. CALL TO ORDER

II. MINUTES

A. Consider Approving Minutes Of The September 3, 2019 Meeting.

Documents:

[100119-PACKET-ITEM-A.PDF](#)

III. PLANNING COMMISSION

A. Consider Text Amendments To Appendix B-Zoning Of The City Code Relating To:

1. Appendix A. "Listing of Permitted and Conditional Uses" relating to "Indoor firing ranges",
2. Article X. Special provisions applying to miscellaneous conditional uses; and
3. Article IV. Rules and Definitions.

Documents:

[100119-PACKET-ITEM-B.PDF](#)

IV. BOARD OF ZONING APPEALS (Does Not Include Outside City Appointments)

A. None.

V. ADJOURNMENT

AGENDA
Independence Planning Commission
Independence Board of Zoning Appeals
Tuesday, October 1, 2019
Veterans Room Memorial Hall 5:30 p.m.

Call to Order

Minutes

- a. Consider approving minutes of the September 3, 2019 meeting.

MINUTES

Independence Planning Commission
Independence Board of Zoning Appeals

Tuesday, September 3, 2019

Veterans Room

Memorial Hall

5:30 p.m.

Call to Order

The Planning Commission meeting was called to order by Vice Chair Steve McBride. New member Lisa Richard was welcomed.

Planning Commissioner Present

Steve McBride, Philipp Umlauf, Barb Emert, Michelle Anderson, Tony Royse, Lisa Richard, Brent Littleton (outside) and Andy McLenon (outside).

Planning Commissioners Absent

Mary Jo Meier

Staff Present

Kelly Passauer, Assistant City Manager/Zoning Administrator

Visitors

Brian Wright, Renita Butler, Kenneth Brown, Melissa Small, Sharon Polster, Craig Fankhauser, Larry Hollandsworth, Pat Hollandsworth, LaVera Viets, Jenny Rood, Clara Baker, Daniel Rood, George Eisele, Ricky Knight, Bob Bruester, Maggie Cleverley, and Robin Frankhauser.

Minutes

- a. Consider approving minutes from the July 2, 2019 meeting.

Barb Emert made a motion to approve the minutes of the July 2, 2019 meeting, Tony Royse seconded the motion. The motion carried 8-0.

Board of Zoning Appeals

- b. Public hearing to consider a variance from the requirements of Section 516 of the zoning ordinance relating to non-residential construction in the floodplain district at approximately 501 South 20th Street.

The public hearing was opened. Brian Wright, representing CMC addressed the Planning Commission. He stated that he wished to construct a tornado shelter in the flood zone. He passed around a drawing, which he did not leave a copy of. He indicated that the tornado shelter was for the safety and protection of their employees.

Vice Chair McBride asked if anyone had a conflict of interest, in which no one responded that they did. He opened the public hearing up to the audience, and there were no comments.

Tony Royse asked if the street had been vacated, to which staff replied they had not located any records that indicated that it had. Lisa Richard asked the Building Inspector, Don Cushing whether it was permissible to build in commercial areas as long as certain requirements were met. Don Cushing indicated that they had to obtain approval to build in the flood way. Lisa asked about section 616.11 and whether the shelter was below ground. Don indicated it was above ground and they have to go to 2' above the base flood elevation. Lisa asked what was between 0' and 2', and Don replied a concrete slab. Lisa Richard asked the applicant if an engineer will be certifying that the code is complied with. Brian Wright indicated that the pad will be built up 2' off the ground on a concrete pad, the shelter would be on top of the pad and no water would run through it. Lisa Richard asked if his engineer knew our code and would build to it. Brian Wright indicated that he had sent the drawing around.

Steve McBride asked if there were any more questions. He then closed the hearing. He read through "a" through "g" of the zoning code requirements that must be considered when reviewing variance requests.

Philipp Umlauf moved to approve the variance request from the requirements of Section 516 of the zoning ordinance relating to non-residential construction in the floodplain district at approximately 501 S. 20th Street to allow construction of a tornado shelter as long as the construction stays consistent with what has been presented, which is being constructed 2' over the flood plain, and all other City codes. The motion was seconded by Tony Royse and approved 6-0.

- c. Public hearing to consider a variance request to decrease the setbacks in an R-2 zoned district at 907-909 East Poplar Street.

Vice Chair Steve McBride opened the hearing. The applicant, Ricky Knight, appeared and stated that they were in the process of enlarging their sanctuary to increase their Sunday school and to construct an ADA restroom in addition to a dining area. He indicated that their congregation is increasing, and the addition would add 30' to the back of the existing building. The addition would be in line with the current encroachment which is 1.8' from the property line.

Vice Chair Steve McBride asked if anyone from the audience wished to speak. No one spoke up.

The staff report was reviewed which included going through the conditions "a" through "g" of the zoning code requirements that must be considered when reviewing variance requests.

Philipp Umlauf moved to approve the variance and reduce the east side yard setback 23.5', from 25' to 1.5' based on staff's recommendation that the conditions in Section 2-116.(1) a-g of the City Code had been met. The motion was seconded by Barb Emert.

The Board of Zoning Appeals portion of the meeting was closed.

Planning Commission

- d. Public hearing to consider a conditional use permit for Bed and breakfast; Boarding and rooming houses; and Short term rentals not elsewhere listed in a R-3, low density multifamily dwelling district at 305 South 10th Street.
- e. Public hearing to consider a conditional use permit for Bed and breakfast; Boarding and rooming houses; and Short term rentals not elsewhere listed in a R-1, large lot single-family dwelling district at 2712 Rolling Green Drive.
 1. Article X. Special provisions applying to miscellaneous conditional uses; and
 2. Appendix A. "Listing of Permitted and Conditional Uses" including, but not limited to "Communication Towers".

305 South 10th Street

Vice Chair McBride opened the hearing. A staff report had previously been provided. Lisa Richard recused herself. The applicant, George Eisele was present and reviewed his request. Mr. Eisele indicated that he had purchased the house at 305 S. 10th Street and upgraded it and wished to utilize it as an AirBnB. He indicated that they could stay one day, or longer. He indicated that he has had interns stay over the summer for three months. The home is fully furnished with high speed internet and it provide a housing alternative to a hotel.

Kenny Brown stated that he owned the property at 308 S. 11th which is occupied by his daughter and granddaughter and he was opposed to a boarding and rooming house. He also indicated he was concerned about Zion Lutheran Church, the parsonage and preschool being close to the proposed short term rental.

Mr. Eisele said he was a member of Zion Lutheran Church for 20 years and sent his four children to school there. He indicated that it is more like a hotel, and he gets to review the clients' ratings before they stay there, and in turn the clients rate the short term rental. He further stated that he is fully invested in the community and owns three buildings in town and four in the county.

Renita butler stated that AirBnB is worldwide and the standards are higher than for rentals. She further stated it is actually safer than having a regular rental.

Planning Commissioner Brent Littleton stated that his family, including his adult grown children use AirBnB, and it is more for business professionals. He further stated it would be a great alternative for individuals here for family reunions, where they have a place to rock their kids, do laundry, cook and do dishes while they are here.

Kenny Brown stated that he had stayed in an AirBnB, but he felt there were plenty of hotels available that do weekly and monthly rates and he did not think a short term rental was a good idea. He further stated that AirBnB is a good business, but this was not a good location.

Vice Chair Steve McBride asked what the capacity was.

Mr. Eisele said it is a two story four bedroom and will sleep seven. It has a driveway that can accommodate five cars, not counting the garage which could house two. He further stated that the pre-school playground is fenced and there are at least two teachers present on the playground.

Bob Bruster asked how many people actually stay there.

Mr. Eisele stated that he has two groups of hunters coming in, bringing three guys from the East Coast and Minnesota. He indicated it would be challenging to find a hotel to fix your quail and freeze it.

Vice Mayor McBride read the staff recommendation to grant the conditional use permit for a short term rental with the following conditions:

1. Off street parking will be provided on the applicant's private property.
2. Exterior lighting will not have an adverse effect by shining onto any neighboring properties.

Staff's recommendation was based on the criteria set forth in 902.2, "a through g" of the zoning code.

Brent Littleton moved to recommend approving the conditional use permit for a short term rental at 305 S. 10th Street as recommended by City staff. The motion was seconded by Andy McLenon. The motion carried 6-1, with Tony Royse voting Nay. Lisa Richard had recused herself and did not vote.

2712 Rolling Green Drive

Vice Chair McBride opened the public hearing. A staff report had previously been provided.

The applicant, Renita Butler, appeared. Ms. Butler stated that this is an AirBnB, she has only one person staying at a time, she enforces strict rules which includes no alcohol, no parties, no smoking and no street drugs. She further stated that she vets the people before they come in and she is there and is very picky about who she allows to stay in her home. She currently stated that she has an aviation engineer staying with her at this time. She has also had entertainers that have presentations. She further stated that she has room in her driveway for her car and the guest's car. She has received no complaints from her neighbors regarding any of her guests, further stating that they have been respectful and clean.

Several neighbors, or relatives of neighbors spoke against the request, including; Larry Hollandsworth, Maggie Cleverley, Melissa Small (her mother lives in the neighborhood), Lavera Viets, Craig Fankhauser, Dave Rood and Kent Brown. Bob Bruester also spoke against the request but indicated that he does not live in the neighborhood. Concerns voiced included not wanting to live near a business, unacceptable and/or unknown people coming and going, children safety, neighborhood instability, increased taxes, decreased property values, etc.

Andy McLenon asked the applicant how long she had been doing this, to which she replied three years. Mr. McLenon then asked her if she had heard any concerns from her neighbors before tonight, to which she replied no. Mr. McLenon asked the applicant if any of the properties had changed hands since she lived in the neighborhood, and she indicated that the house across the street had been sold three to four times, and the home south of her had been sold. Mr. McLenon asked the applicant if she was involved in vetting the new occupants, to which Ms. Butler stated that she has no control over that.

Lisa Richard stated that it seems like the public is just realizing that we have this new ordinance. She reviewed what would not allow it, and if there were any additional conditions that could be required.

Ms. Butler suggested limiting it to one person. Vice Chair McBride asked if she had any intention of renting to more than one person, to which Ms. Butler stated no.

Lisa Richard suggested adding restrictions regarding verified complaints, such as driving too fast, violations of City code, noise, traffic, etc.

Barb Emert suggested making it probationary, for a year or less and then being reviewed.

Lisa Richards suggested two years, then a review.

Brent Littleton suggested waiving the fee for a renewal, since she only charges \$25 per night and the application fee is \$200.

Tony Royse stated that there were eight people opposed and he wasn't sure how you would put a restriction on it.

Andy McLenon stated that if he sold a product out of his house it was no different. He also said he has a BBQ in his back yard and it could be loud and obnoxious. He asked what the different was.

Vice Chair McBride questioned if it could be restricted, since they had already approved one without additional restrictions.

Tony Royse reminded the Commission that over 50% of the residents opposed it.

Lisa Richard indicated that the other one was in an R-3 zone and was a little different than this one. She suggested adding conditions to address the neighbors' concerns.

Tony Royse stated that they do not want that type of business in their neighborhood.

Phillip Umlauf stated that the concerns were legitimate, but it is no different than a rental or somebody purchasing a house in your neighborhood as you don't know them either. He further stated if they are rentals you have no say in who rents them.

Tony Royse stated that rental property is not once a week with different people.

Phillip Umlauf stated that he agreed, but a rental house is still a business as it provides income and anyone that has multiple rentals that is a viable business. One month verses one week doesn't make a rental house any less of a business. There are neighborhoods that are more suited for this type of business.

Renita Butler stated that she could cut this short and withdrew her application and stated she would close her AirBnB. She indicated that she has one person staying there, but they will be gone by the end of the week and she will cancel her other reservations. She stated that she felt she had to recognize her neighbors' concerns.

Vice Chair McBride stated that he appreciated her gesture and he apologized that it came to this.

Ms. Butler stated that she didn't want to upset her neighbors as that is very important to her.

Tony Royse moved to deny the application, seconded by Lisa Richard. The motion carried 7-0. Brent Littleton had left the meeting before this vote.

Adjournment

The meeting was adjourned with a motion by Andy McLenon, seconded by Philipp Umlauf. The motion carried 7-0.

Steve McBride, Vice Chair

Andy McLenon, Secretary

Planning Commission

- b. Consider text amendments to Appendix B-Zoning of the City Code relating to:
 1. Appendix A. "Listing of Permitted and Conditional Uses" relating to "Indoor firing ranges",
 2. Article X. Special provisions applying to miscellaneous conditional uses; and
 3. Article IV. Rules and Definitions.

On August 22, 2019 the City Commission initiated a public hearing before the Planning Commission to consider a text amendment to the Conditional Use Table to allow indoor firing ranges as a conditional use in the C-3 Central Business District. The request to the Commission was submitted by the Independence Gun Club who was represented by Police Chief Harrison.

City code 1604.2 provides the following regarding text amendments:

1604.1. Recommendations: Upon the conclusion of the public hearing the planning commission shall prepare and adopt its recommendations and shall submit the same, together with a record of the hearing thereon, to the governing body. Said recommendation may be for approval, disapproval or approval in part and reasons for the recommendations shall be included as appropriate.

1604.2. Amendments to text: When a proposed amendment would result in a change in the text of these regulations but would not result in a change of zoning classification of any specific property, the recommendation of the planning commission shall contain a statement as to the nature and effect of such proposed amendment and determinations as to the following items:

- a. Whether such change is consistent with the intent and purpose of these regulations;
- b. The areas which are most likely to be directly affected by such change and in what way they will be affected; and
- c. Whether the proposed amendment is made necessary because of changed or changing social values, new planning concepts or other social economic conditions in the areas and zoning districts affected.

In order to allow their request, it would require adding "Indoor firing ranges" to the permitted and conditional use table and allowing such use as a conditional use in the C-3 district. If approved, a definition of "Indoor firing ranges" should be added to Article IV. Rules and Definitions.

It should be noted that if this text amendment is ultimately approved by the Commission, it would still require the Independence Gun Club to go through the conditional use permit process, which is similar to the rezoning process. A public hearing would need to be held before the Planning Commission, and their recommendation would be forwarded to the City Commission for final consideration. The recommendation from the Planning Commission could include additional conditions relating to noise, safety/security plan, environmental, ventilation, wall/ceiling construction, prohibition of alcohol on premises,

liability insurance, minors must be accompanied by adults, conformance with specified already established standards such as GSA, NRA, etc. If the City Commission approved the conditional use permit, they could also modify the conditions recommended.

If the Planning Commission wishes to approve adding “Indoor firing ranges” to the permitted and conditional use table and allowing such use as a conditional use in the C-3 district as requested, then it is recommended that the following determinations be included in the motion:

- a. That such change is consistent with the intent and purpose of these regulations;
- b. That the areas which are most likely to be directly affected by such change will include the C-3 which will allow indoor firing ranges with a conditional use permit which does provide an opportunity for property owners within the notification area to voice any concerns to both the Planning Commission and City Commission prior to approval;
- c. The proposed amendment is made necessary because of new planning concepts in the C-3 Central Business District.

In addition, if the Planning Commission wishes to approve this request, the following definition should be added to Article IV. Rules and Definitions:

Indoor Firing Range: means an indoor area or facility designated or operated primarily for the use of firearms.

Included for your reference are the following documents:

1. Request for Commission Action (RCA) to the City Commission for their August 22, 2019 meeting.
2. Public Hearing Notice.



REQUEST FOR COMMISSION ACTION
CITY OF INDEPENDENCE
August 22, 2019

Department Police Department

Director Approval *Jerry Harrison*

AGENDA ITEM: Consider initiating a public hearing before the Planning Commission to consider a text amendment to the Conditional Use Table to allow indoor firing ranges as a conditional use in the C-3 Central Business District.

SUMMARY RECOMMENDATION: Initiate the hearing.

BACKGROUND: City staff has been in contact with a representative of the Independence Gun Club and they are requesting to place an indoor firing range in a downtown building which is zoned C-3. Indoor firing ranges are not listed on the Conditional Use Table for any zones. We are requesting to initiate a text amendment that would allow them to apply for a conditional use permit for an indoor firing range.

BUDGET IMPACT: No direct budget impact.

SUGGESTED MOTION: I move to initiate a public hearing before the Planning Commission to consider a text amendment to the Conditional Use Table to allow indoor firing ranges as a conditional use in the C-3 Central Business District.

SUPPORTING DOCUMENTS: N/A

City of Independence, Kansas

NOTICE TO THE PUBLIC

The Independence, Kansas, Planning Commission will conduct a public hearing on:

Tuesday, October 1, 2019, at 5:30 p.m.

To receive comments to consider text amendments to Appendix B-Zoning of the City code relating to:

1. Appendix A. "Listing of Permitted and Conditional Uses" relating to "Indoor firing ranges",
2. Article X. Special provisions applying to miscellaneous conditional uses; and
3. Article IV. Rules and Definitions.

Case Number:

2019/ZA/05

The hearing will be conducted in the Veterans Room, Memorial Hall, 410 North Pennsylvania Avenue, Independence, Kansas, and will begin at 5:30 p.m. All interested persons should attend and they will be heard. Persons wishing to comment, but who cannot attend this hearing, should provide their written comments to:

Kelly Passauer
Zoning Administrator
811 W Laurel Street
Independence, KS 67301
(620) 332-2506

Information regarding this application is available in the Zoning Administrator's office. If special accommodation is required, please inform the Zoning Administrator.

Kelly Passauer, Zoning Administrator